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Degree of Master of International Studies
(International Area Studies)

Colonial Legacy and Border Disputes in African States:
A Case Study of Tanzania-Malawi Border
Dispute over Lake Nyasa/Malawi

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Graduate School of International Studies
Seoul National University

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**Colonial Legacy and Border Disputes in African States: A Case
Study of Tanzania-Malawi Border Dispute Over Lake
Nyasa/Malawi**

A thesis Presented

by

Raphael Macha

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ABSTRACT

African countries are characterized by many border conflicts which hinder the development process to take place effective and efficiently. Most of the African border conflicts are the result of the colonial legacy in the continent. But it is more than five decades now since independency of these countries and yet the effect of colonialism remains as the main obstacles for development. African border disputes have cost many lives and still is the main obstacle for development.

This thesis find that colonial legacy is the only causes for border disputes but other factors which mainly are the national interests are playing a big role to the escalations of these conflicts. These other factors are such as natural resources, lack of commitment from political leaders and weakness of the International Customary Law. The case study of Tanzania-Malawi border dispute over lake Nyasa was used to analyze and to show the peculiarity nature of African border disputes which make some of them to be deadlock without any hope for its peaceful resolutions. The three-image level theory framework which used to analyze this study explain well the interest of each actor in this border conflict and show clearly how the interest of each part colliding with others which reduce the possibility for cooperation in the solving of this dispute.

Key Words: *Border Conflicts, Colonial Legacy, International Customary Law, Heligoland Treaty, Mediation, Lake Malawi.*

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TABLE OF CONTENT

ABSTRACT.....	i
ABBREVIATIONS AND ACRONYMS	iv
LIST OF TABLES AND FIGURES.....	v
CHAPTER 1: GENERAL INTRODUCTION.....	1
1. THE NATURE OF THE PROBLEM AND THE ORIGIN OF THE STUDY.....	1
2. HISTORICAL BACKGROUND OF BORDER DISPUTES IN AFRICA.....	6
3. STATEMENT OF THE PROBLEM	11
4. RESEARCH DESIGN	12
5. RESEARCH METHODOLOGY	14
6. LITERATURE REVIEW	16
7. THEORETICAL FRAMEWORK	26
8. THREE IMAGES LEVELS OF ANALYSIS	26
9. OUTLINE OF THE STUDY	28
CHAPTER 2: UNDERSTANDING AFRICAN BORDER DISPUTES THROUGH TANZANIA- MALAWI BORDER DISPUTE CASE STUDY	31
1. COLONIAL LEGACY AND TANZANIA-MALAWI BORDER DISPUTE	31
2. HISTORICAL BACKGROUND	35
3. THE DISPUTE IN QUESTION	48
3.1 Tanzania's Position in the Dispute.....	50
3.2 Malawi's Position in the Dispute	51
3.3 Lake Nyasa in Details	53
CHAPTER 3: THREE IMAGES LEVELS OF ANALYSIS IN TANZANIA-MALAWI BORDER CONFLICT	56
1. FIRST IMAGE: INDIVIDUAL/HUMAN LEVEL ACTORS	57
2. SECOND IMAGE: STATE LEVEL ACTORS.....	62

3. THIRD IMAGE: GLOBAL LEVEL ACTORS	65
4. CHALLENGES IN SOLVING THE BORDER CONFLICT BETWEEN TANZANIA AND MALAWI	70
1. Lack of Commitment from Political Leaders.....	70
2. Ambiguity of Heligoland Treaty.....	71
3. Maps and Report from Britain And German On the Border Line.....	74
4. The Possibility of Having Natural Resources from The Lake	75
5. Local Community Who Are Depending on The Lake for Their Living	79
6. The Weakness of International Customary Law	80
CHAPTER 4: CONCLUSION AND RECOMENDATIONS	82
1 CONCLUSION	82
2 RECOMMENDATIONS	84
REFERENCES	86

ABBREVIATIONS AND ACRONYMS

ICJ	International Court of Justice
OAU	Organization of African Unity
SADC	South African Development Countries
UN	United Nations
WWI	First World War

LIST OF TABLES AND FIGURES

Table 01: Areas affected by Border disputes up to 2017.....	03
Table 02: Periodical table to show events regarding the dispute.....	46
Figure 01: Africa Map.....	10
Figure 02: Tanzania-Malawi Border Dispute.....	48
Figure 03: Lake Nyasa Area.....	54
Figure 04: Malawi exploration Block.....	76
Figure 04: Tanzania-Malawi Border Dispute.....	48

CHAPTER 1: GENERAL INTRODUCTION

1. THE NATURE OF THE PROBLEM AND THE ORIGIN OF THE STUDY

For many years the interstate politics within Africa is characterized by unresolved territorial and border conflicts. Some countries have made claims and counter-claims over territories with the various reasons behind such as social, political and economic interests. These disputes have been the main source of war and armed conflicts in the continent. Currently there are many ongoing border and territorial conflicts in the world which threatens the world security. These conflicts include China- India over Aksai Chin; India-Pakistan over Kashmir; and South China Sea which involves various nations such as China, Malaysia, Philippines, Taiwan and Vietnam (A. N. Kenneth, 2016). But in Africa the case has different views and different causes due to the colonial legacy and its impacts in the continent.

According to (Ikome, 2012) from the late 1950's up to the late 1990's most of African states have been participated in border dispute. Since the attainment of independency borders conflicts have been the main source of struggles, misunderstanding and conflicts in Africa (Okumu, 2014). According to (Msafiri, 2011) 48 countries out of 54 African countries are experiencing border conflicts. Many Africans has lost their lives defending the colonial borders and some of them have displaced from their place of origin due to the border conflicts and wars. Some of border disputes in Africa which are the results of

colonial legacy can include Ethiopia-Eritrea over Badme (1998-2000), Cameroon-Nigeria over Bakassi (1994-2006), Sudan-South Sudan over Abyei, and Tanzania-Malawi over Lake Nyasa (1967 to present) (A. N. Kenneth, 2016).

Many scholars support that, boundaries of modern African countries are unusually arbitrary as a result of their largely colonial origins (Ajala, 1983) and (Englebert, Tarango, & Carter, 2002). However, there is not enough evidence to support if colonial legacy is the main causes of border conflicts in Africa. Few supports that all over the world border are artificial why only Africa (Clapham, 1996).

This study will use Tanzania-Malawi border dispute over the Lake Nyasa (named Lake Nyasa in Tanzania; Lake Malawi in Malawi; and Lake Niassa in Mozambique), from 1967 to 2018 to study and analyze the relationship between the colonialism and African border conflicts. By using Tanzania-Malawi border dispute this study will focus on the historical causes of border conflict between Tanzania and Malawi and why it has been difficult for the two countries to resolve the dispute. The main motives for this case study is, regardless of the long duration of dormancy, the dispute has the tendency of escalate and de-escalate according to the matter at stake. This study will seek to understand why the dispute has escalated and de-escalated within various period and the process through which African leaders have played the role in making the conflict more ambiguity apart from the colonial legacy.

Table 01: Areas affected by Border disputes up to 2017

Conflicting Parties	Conflict Period	Trans-Boundary Minority	Trans-boundary Resources	Frontier	Agreement Implementation	Status in 2017
Ethiopia/Somalia	1950–61; 1963–77; 1977–78	+	+	+	+	Managed in 1964, 1967 and 1968
Cameroon/Nigeria	1963-2002	+	+	–	–	ICJ award in 2002. Effectively ceded by Nigeria in 2008
Algeria/Tunisia	1961-1970	–	+	+	–	Agreement in 1970
Algeria/Morocco	1962-1970	–	+	+	–	Agreement in 1970
Ethiopia/Kenya	1963-1970	-/+	-/+	+/+	-/-	Agreement in 1961

Côte d'Ivoire/ Liberia	1960- 1961	-	-	+	-	Agreement in 1961
Mali/ Mauritania	1960- 1963	+	+	-	+	Agreement in 1963
Chad/Libya	1935- 1994	+	+	+	-	ICJ award in 1994
Guinea Bissau/ Senegal	1980- 1992	-	+	+	+	ICJ award in 1992
Dahomey/ Bissau/Niger	1963– 1965	-	-	+	-	Agreement in 1965
Kenya/Somalia	1962– 1984	+	-	+	+	Agreement in 1984
Tunisia/Libya	1990– 1994	-	+	+	+	ICJ award in 1994
Malawi/Tanzani a	1967– up to date	-	-	-	+	No agreement
Mali/Burkina Faso	1963; 1974– 75; 1985– 86	+	+	+	+	No Agreement

Ghana/Upper Volta/Burkina Faso	1964–66	-	-	-	-	Colonial agreement/ Not active
Ghana/Upper Volta/Burkina Faso	1964–66	-	-	-	-	No agreement/ Not active
Equatorial Guinea/Gabon	1972	-	-	-	-	Colonial agreement/ not active
Ethiopia/ Eritrea	1952–1992; 1998–2002	-	-	+	+	ICJ award

Key to the Table

- (+) indicates the presence of a major conflict issue,
- (++) the very strong presence of a major conflict issue
- (–) the absence of a major conflict issue, and
- (-/+) a greater or lesser presence of a major border issue

2. HISTORICAL BACKGROUND OF BORDER DISPUTES IN AFRICA

The history of African border disputes originated in the colonial domination and its impact on the continent. In the colonial era European powers struggled among themselves to divide African continent so that they can manage and rule it in a peaceful way. Due to various conflicts between European countries, colonial powers decide to divide the continent among themselves in a peaceful way through some treaties and protocols. The Berlin conference of 1884 was the initial stage of scramble for and partition of the African continent. However, the Berlin conference was not self-sufficient to demarcate the continent. The conference shows the sphere of influence, but the colonial powers were supposed to demarcate and delimit the continent through various treaties and arrangements.

The Berlin conference was followed by various treaties among Europeans countries to demarcate their sphere of influence. Due to the lack of enough knowledge and African terrain European powers divide some ethnic groups in to two or three different countries and put together some hostile societies and allocate them in one country. Approximately one hundred and ten boundaries conflicts existed in African continent. Most of African border disputes are said to be emanated from colonial process era in 20th C. This means that it was the treaties, contracts and exchanges of notes and protocols between the various imperial powers that provided the legal basis for the boarders (Okumu, 2014)

The danger of the inherited colonial borders was the first concern for new independent African countries. With this regards African leaders adopted resolution AHG/Res.16(1) at the Summit of Cairo in July 1964. The declaration announced the safeguarding of the existed colonial borders at the time of the attainment of political freedom. This principle was known as the principle of *Uti possidetis* and was the guiding framework from African Union regarding the border disputes in African countries(Ababa). Despite the Cairo Declaration of 1964 border conflict continued to cause chaos in African continent. The inherent colonial borders turn to be a cause and catalyst for separation rather than unifications. Then African Union come up with the African Border Union Programme in 2011 which was the efforts to demarcate the boundaries in the continent.

The African Union Border Programme was formed with the main purpose of accomplish the remain task of delimitation and demarcations of African borders. This decision was due to the reasons that for more than four decades of the adoption of the Cairo Declaration most of the African countries didn't managed to end up their border disputes. With this important task to end borders conflicts in Africa, the Programme was aimed to finish the task in the year 2017. As of present, there are still many dormant and active border disputes in African continent including Tanzania-Malawi border conflict over lake Nyasa.

Disputes in African continent which to large extent based on border disputes has contributed much to the deterioration of economic development of the continent (Ikome,

2012). In a traditional way the main purpose of the borders was to demarcate or to separate two political entity. But globalization have changed this purposes to large extent. There are now predictions of an emergent borderless world or “global village” due to technological advancement, globalization and regional integration processes. Although some regions have moved closer to realizing this dream such as European Union countries, others such as Africa, are still deeply divided by political boundaries.

African state borders are different from European and North America. For Europe and North America borders are the results of Westphalian concept of boundaries. African countries are new to the Westphalia concept of border, but it doesn't mean that there were no borders in African continent before the period of colonization. African boundaries were the symbol to demarcate some small groups and kingdoms in the society and not nation state (Okumu, 2014).

To understand the characteristics of modern day African states borders we should start with the Berlin Conference of 1884 to 1885 and its consequences on the present day African border conflicts. The Berlin conference on scramble for and partition of Africa which was the first attempt by the European powers to introduce modern day nation states.

But some scholars argued that the scramble for Africa by colonial powers, and the beginning of the basic features of nation state boundaries in Africa, had commenced before the Berlin Conference. The conference only helped to control the imperial procedure of

claiming territory. In this framework, the boundaries established on Africa were perceived to be limited, intended to separate one power from another and supposed to be similar with the Europe nations, boundaries with their typical dual role of peace and war. Frontiers are indeed the razor's edge on which hang suspended the modern issues of war and peace, of life or death to nations.” (Okumu, 2014)

Furthermore, some argues that African artificial and arbitrariness borders in the results of the rivalry between colonialists in the late nineteenth and early twentieth centuries. On top of that, these competitions were the obsessions to completely demand certain real or imaginary African natural resources. More often colonial countries were attracted in one resource or the other, the control of commerce and markets or access to trade routes and rivers transport systems. The colonial states and the borders that emerged out of these rivalries largely depended on how one imperial power overcame its rival. (Okumu, 2014)

It is in this framework this study will analyze the reasons why African border conflicts has been difficult to deal with by using Tanzania-Malawi border conflict case study, and try to understand the causes, process and the way forward for African borders disputes. This study will use historical analysis to analyze the process through which African border conflict were transformed from non-security to security problems. By using the Tanzania-Malawi border conflict case study to analyze African Border Conflicts due to its specific peculiar characteristics, causes, escalation and de-escalation process.

Figure 01: Africa Map



3. STATEMENT OF THE PROBLEM

Tanzania and Malawi are two neighboring countries which suffered for long deadlock border conflict on the lake Nyasa. The negotiation process to solve the conflict has been stopped since 2012 due to the lack of consensus for both countries on their standing positions on the conflict. It has been argued by many scholars that, the main causes of the African border conflicts are colonial legacy. Some of African countries have managed to solve their border conflicts through various measures such as arbitration. But the conflict between Tanzania and Malawi has more than five decades and no any sign for reaching agreement between the two countries. This rise my attention to study the reasons behind this border conflict and make some policy recommendation for the possible solutions for this problem. This study will use a historical analysis to understand why it has been difficult for the two countries to solve the border conflict. In doing that the study will use major political events from the period of colonialism and post-colonialism and examine the contribution of those events in all process of conflict escalation and de-scalation.

Since the possibility of having oil and gas in the shore of the lake in 2011 increase the tension for the conflict, this study also will throw light on how political leaders can cooperate and use the available natural resources in a peaceful way. The discovering of oil and gas in the lake can be both a bless and curse for the two countries if no any measures will be taken by the two countries to end the existing dispute, with the consideration that

both countries are poor countries and to large extent depend on natural resources for their development.

4. RESEARCH DESIGN

Due to the reasons that there are many African border conflicts, in this research a case study research was employed. The case study of this research will be undertaken at Tanzania-Malawi as the problem exists. Case study design is the approach which will be used by the researcher to come up with reliable findings. This research will be conducted in Tanzania environment since it has been difficult for researcher to access some information from the Malawi side.

Aim of the research

This study will analyze why some African border disputes have been resolved soon and other are still deadlocked with no hope to be finished. The study will also reveal historical causes of the border dispute between Tanzania and Malawi. Furthermore, the study will provide strong background for African border disputes with the case study of Tanzania-Malawi border conflict and its challenges in reaching the conclusion. In addition, there will be analysis of the contradiction of the customary international law where international law interferes with national interests of individual countries.

Objective of the research

To develop pragmatic resolution strategies and policy recommendations in solving the border conflict which is currently ongoing between Tanzania and Malawi through systematic analysis on cause and process of the conflict escalation and de-escalation.

Research Question

This research will be guided by the following question:

How colonial legacy contributed to the rise of the border dispute between Tanzania and Malawi from 1967 to 2018.

Sub-Questions

What are the main causes of Tanzania- Malawi border dispute?

Who are the key actors in the conflict and what are their interests.

What are the current challenges and what are the possible policy implication to the problem.

What are the measures which have been taken by the African leaders to solve border conflict within the African continent?

How does the interest of Tanzania crush with the interest of Malawi?

Why some African border conflict resolved soon while others like Tanzania and Malawi still are ongoing.

Rationale of the Research

The existence publishing on African border conflict try to analyze the causes and solutions of African conflicts. But no enough studies which are focusing on the Tanzania-Malawi border conflict as one of the colonial legacy problem in Africa. The study aims to understand the causes of the border conflict between Tanzania and Malawi using the three images level of conflict analysis which starting from Individual level to the Global level and its implications. Furthermore, this study will be interested because will analyze the roles played by political leaders in either increasing or decreasing the conflict between Tanzania and Malawi through their speeches and positions toward resolving the conflict. The findings of this study will be important for policy makers, mediators and others who will seek to understand the conflict between Tanzania and Malawi over lake Nyasa.

5. RESEARCH METHODOLOGY

According to (Paltridge & Starfield, 2007) research methodology includes the theoretical paradigm or framework in which the student is working; to the stance he or she is taking as a researcher and the argument that is built in the text to justify these assumptions, theoretical frameworks and/or approaches as well as the choice of research questions or hypotheses. We can refer it as an organized system useful to resolve the research problem. It describes the research design, area of study, the sample, sampling procedures, data collection methods and analysis technique. Research methodology describes procedures employed to achieve desired research objectives.

Data Collection Methods

In collecting data from various sources, the following methods were employed. Library research was the main source of secondary data collection. The secondary data was collected from various source such books, journals, articles, treaties and any other archives. It will also include speeches from political leaders regarding their view and opinions on the subject matter. Also interview with diplomats and lawyers from Tanzania will be included in the analysis.

Significance of Research

This study will provide policy recommendations to political leaders and policy makers on the historical causes of the Tanzania and Malawi border conflict and why it has been difficult to resolve this dispute. This study will be a blueprint on understanding the diversity of African border conflicts despite of having the same main causes which is colonial legacy. Further the study will come up with the alternative suggestion for sharing the resources which are in the lake without damaged the welfare of the local people who are depending on the lake for their daily life.

Research Challenges and Setbacks

Tanzania-Malawi border dispute started long time ago hence there is the lack of sufficient data in the internet regarding the topic especial the role of government prior to the year 2000's. Also because the mediation process was stopped there no current information from

the frontiers. Privacy was the most obstacles especially to get official Government document on the dispute from government offices due to the nature of the problems. It has been difficult to interview many people as the reasons that most people are Government workers who were not willing to give many informations rather than relying on what was already published.

6. LITERATURE REVIEW

In this section, we discuss some of the previous studies related to the history and causes of African borders and land disputes and its impacts on the political relations between African states. Many previous studies have investigated on the historical, social, economic and political causes of African border disputes and resulted with mixed feeling and inadequate remarks.

The study on border dispute largely suggests that nations seek and compete for territory possession because of economic, military-strategic, or ethnic/culture value. Some regions are economically treasured for natural resources they contain or their strategic position in trading networks. But other can be strategically valuable for protection of the homeland or for providing superior lines of attack. While others are politically valuable because their populations share ethnic, cultural, or linguistic ties with cross-border families. For the most part, these economic, strategic and political variables have been incorporated to examine why some conflicts are more prone to militarization than others and why some disputes are

more likely to be resolved than others. Relatively few studies have systematically explored the role of such variables in determining why some neighboring states, and not others, have disputes in the first place, and none has properly examined the variation in the location of disputed areas along dyadic border **(Goemans & Schultz, 2017)**.

According to **(Oduntan, 2015)** in his book focused on the application of International Customary Law on resolving the African border conflicts criticized the contemporary International Law for being unable to resolve African borders and territorial disputes. He argued that, according to jurist there are two types of borders which are natural one and artificial borders. But he noticed that the natural borders are no longer existed and most of the borders are artificial which are the results of arbitrary demarcation by the World leaders. The author's central idea is we cannot avoid International Customary Law in dealing with African border conflicts because African borders are the results of artificial Arbitrations which owe its origin in International Customary Law.

Also, he notified other sources of African disputes such as pastoralist and rural issues. Pastoralist societies within two countries due to the nature of their activities they trend to cross each other borders for searching for pasture and water hence the creation of tension and disputes. Finally, he added that control over natural resources have been the main catalyst for border disputes in African continent. But also indicated that international

customary in African countries law lack legal binding when dealing with the matter state interest especial the interest of developing countries in Africa.

(**Okumu, 2014**) analyzed the purpose and functions of International Boundaries with specific reference to Africa provided an overview of the history and character of African boundaries. According to him the formation of the modern Nation State can be traced back to the Peace of Westphalia in 1648, which resulted in the decentralization of the Holy Roman Empire and the early stages of territorial units which currently regarded as States. But in comparison with North America, Westphalian concept of Statehood and State boundaries is a new phenomenon to African continent. That is not to suggest in any way that borders did not exist in Africa before the interaction with external influence, predominantly that of Europe. The existed borders in Africa were social phenomena that govern inter-human and inter-communal relationships. According to him the information of the nature, purposes and functions of international borders is important when working on disagreements relating to their location, management and administration.

Furthermore (**Okumu, 2014**) indicated that, border conflict in African countries has been more security issue rather political one, he informed that each of East African states has more than one border dispute and apart from lack of clarity in the border demarcation struggling for natural resources security concern is the third main causes of African border disputes. Borders in African states mainly they have been indicated by natural terrains such

as mountains and lakes and where these areas have natural resources the border conflicts are much a like to occur.

According to **(Ikome, 2012)** working on Africa's international borders as potential sources of conflict and future threats to peace and security; he noticed that since their political independence most of the African countries experiencing conflicts among themselves over common boundaries. The causes of these conflicts were ranging from various issues such as trans-boundary minorities, trans-boundary resources, unclear frontiers, and the contestation or difficulty of implementing existing colonial and post-colonial boundary agreements. Furthermore, he informed that from the years 1950s up to the late 1990s, more than half of Africa's countries have been engaged in some form of boundary-related conflict. While some of these conflicts were resolved on the right time through bilateral negotiations or third-party facilitation such as (Côte d'Ivoire–Liberia 1960/1961, Mali–Mauritania 1960/1963 and Dahomey–Bissau–Niger 1963/1965), others were very protracted, e.g. Ethiopia–Somalia (1950 to 1978 and beyond) and Cameroon–Nigeria (1963 to 2002). Others reached the International Court of Justice for Arbitration (ICJ) which can include countries such as Tunisia–Libya in 1994, the Guinea Bissau–Senegal border conflict in 1992, the Libya–Chad claims over the Auzou Stripe, which was only brought to closure in 1994, and the Cameroon–Nigeria border conflict that was settled by a 2002 ICJ verdict.

The author concluded by arguing that, the future boundary related disputes in Africa will be the continuations spill-over of governance-related intra-state conflict; fights over important natural resources located in the boundaries, particularly oil as Africa's oil becomes increasingly attractive to global capitalists; trans-border crimes, including human trafficking and the smuggling of drugs and small arms; and the use of neglected border areas as sanctuaries for terrorist groups (Ikome, 2012).

(Alao, 2007) in his book “**Natural Resources and Border Conflicts in Africa**” argued that, African conflict are the results of the struggle on how to manage the available resources. He further noticed that African countries leaders failed to manage their natural resources for their development and this resulted in to various conflicts both intra and inter-countries conflicts. The author also informed natural resources in Africa either plenty or scarce has been the source of chaos due to lack of good governance on how to share those resources. Also, he contends that there is no direct correlation between natural resources and conflict beyond the structures, processes, and actors associated with the management and control of these resources. Concluding from his ideas, most of the conflicts in African are the results of poor governance by the political leaders which made them fail to share the natural resources for the development of their countries.

According to (Englebert et al., 2002) border conflicts can be originate from the ill-defined nature of many borders. Poor delimitation and demarcation, which can be caused by the

same colonial authority was in control of both sides of the boundary or due to the imprecise colonial agreements, are common occurrences across the continent. The former may cause classical territorial disputes, and in the latter case attempts at demarcation often cause tensions. Discrepancies between delimitation and demarcation may also promote conflict (Allott, 1974).

Some vivid examples of African border conflicts which have been caused by the contradicting treaties can be the disputes between Benin and Niger (over the island of Lete), between Ethiopia and Somalia, and between Nigeria and Cameroon (Mariam, 1964). Other delimitation conflicts have involved Burkina and Mali, Chad and Nigeria, Côte d'Ivoire and Ghana, Zaire and Zambia, and Zambia and Botswana. Sudan and Kenya also disagree over the "Ilemi Triangle" portion of their joint boundary (Brownlie, 1980).

(Zartman, 1969) informed that there is the belief that the boundary areas which contains natural resources can magnify disputes. This was the case with the armed clashes between Burkina and Mali in 1974 and 1985 over the Agacher strip, which was thought to hold oil reserves. The phosphate deposits in Western Sahara have also influenced Moroccan claims over the region, as have oil fields in the dispute about offshore islands between Cameroon and Nigeria. In general, unequal resources—including water, oil and other minerals, fisheries, and access to the sea—seem to promote conflict (Prescott, 2014).

(Malinga, 2015), assessed the relations between the first presidents of both Tanzania and Malawi and revealed their relation was antagonistic hence hindered the room to the negotiation for the dispute at the early stage of the conflict. As it was noted that, President Nyerere at first acknowledge that, according to Helgoland Treaty no part of the lake was belong to Tanzania's side, but he was calling up the room for negotiation with the Malawi side on the way the two countries they can share the lake without affecting their political relations. President Banda was accused President Nyerere for supporting rebellion in Malawi by receiving his political opponents. Tanzania condemned Malawi for supporting white ruling in Mozambique and South Africa. This led to the long delay to discuss the issue in a diplomatic way instead both countries diploid military and patrol boats near to the lake for defense purposes.

Many legal analysts have through light in the dispute and give their opinions. There are various approaches which can explain the dispute in legal perspective but most lie on the Customary International Law and various Regional Agreements. Among others is the principle of *Uti Possidetis* which was agreed by African States in Cairo Summit in 1964. This principle stipulated the importance of recognizing borders which were demarcated by the colonialist due to the reasons that any attempt to change the border will be of much consequences. But the principle doesn't reject the member countries to extend their border by mutual consent. And here lay the Tanzania concern to shift the border by mutual

concern while Malawi insists on respecting the border which was demarcated by colonialist. And the most interesting thing is that, President Nyerere who was the Tanzania president at that time he is the one who proposed this idea to the summit (Oduntan, 2015).

According to **(Maluwa, 2015)** African leader such as Kwame Nkrumah were advocated rearrangements of the African border to match with the African ethnic societies so that to avoid border and political conflicts. On the other side Modibo Keita by then the president of Mali insisted that African countries should recognize their Nation state as they are at the time of independency due to the reasons that, any attempt to reformulate the composition of African state will not bring any single veritable nation in Africa (Touval, 1967). At the Cairo summit of 1964 the Assembly of Heads of State and Government went on solemnly to declare that all member states agreed to pledge themselves to respect the borders existing on their achievement of national independence hence all member States are bind by this principle including Tanzania and Malawi (Ababa). This shows that even though all countries agreed to respect the colonial borders still some of them have the different opinion on this issue. This make us to think on the other factors for border conflicts in Africa. Because when there are natural resources in the border countries they are not daring to adhere the principle of *Uti Possidetis*.

Both **(Yoon, 2014)** and **(A. N. Kenneth, 2016)** informed that for the long time the conflict was dormant, but the discovering of oil and gas in the shore of the lake reactivated the

conflict between the two countries. They argued that, the exploration of oil and gas in the lake increase the value of the lake and because of this every country would like to own the existed natural resources. This prove that, natural resources in the shore of the lake is the catalyst for the current conflict. If the Heligoland Treaty and the colonial legacy was the trigger of the dispute in 1967 the oil and gas exploration in the lake by the British company was the retriggered of the dispute. Also, they informed that the dispute between two countries has stated in the year 1967 when Tanzania side decided to inform the Malawi side on its concern of the median border. Through all this time up to 2011 the conflict was not seen of important to be solved by the political leaders. Simply put, the issue was never of significant strategic concern to either side to motivate a resolution, and successive presidents from both countries deferred the issue to their successors.

According to (Mahony et al., 2014), the tension between the two countries escalated in the year 2011 when Malawian Government gives the British Company the right to explore oil and gas on the shore of the lake. Tanzanian side informed the Malawian side to call off the exploration of natural resources on the shore of the lake until the dispute has been resolved. This was followed by the military arrangement by both two countries while on the Government leaders insisted that negotiation is their priority to solve the conflict. As one of Tanzania's Member of Parliament said *“We expect this conflict will be solved diplomatically using a committee of foreign affairs ministers from both countries and using*

the mediator whenever needed. Malawi is our neighbor and therefore we would not like to go into war with it. However, if it reaches the war stage then we are ready to sacrifice our people's blood and our military forces are committed in equipment and psychologically. Our army is among modern and stable defense forces in the world'' (Maseko, 2014).

Since there is the shortage of literatures which studies Tanzania-Malawi border conflict as social problem. This study will analyze the conflict as a social phenomenon which can be transformed by leaders to escalate and de-escalate. Hence most literatures and African experts analyzed this problem through legal, historical and geopolitical perspectives this study will emphasis on the other analytical framework to this problem apart from all the above. This study will examine the roles of African leaders in the transformation process of Tanzania-Malawi border conflicts through the three images levels of analysis. Three levels of analysis will explain the role of each levels in the disputes starting from the individual levels, state levels and global levels. Through these levels of analysis which based on the theory of realism in the study of the relations between the world state we can be in the position to recommend which policy should be adopted by the two side to manage the conflict or to solve the conflict in a manner that will lead to the peaceful resolutions.

7. THEORETICAL FRAMEWORK

This study will be guided by the theory of realism specifically the three images level of analysis by Kenneth Waltz. Realism as the theory of International Relations was introduced by various philosophers such as Thucydides and his explanation of the Peloponnesian War, and Niccolo Machiavelli and The Prince, as supporters of realism theory. The main argument for this theory is that, the relations between states are based on power. According to them the main goal of any state is power maximization, and this is the main causes of war between states. Furthermore, the theory argues that there is no order in the world and states which have power will dominate the relations between the states (Morgenthau & Thompson, 1992). According to realists there is no possibility for state to cooperate because each state will seek for her national interest which most of the time is different from another.

8. THREE IMAGES LEVELS OF ANALYSIS

Three images level of analysis was introduced in the field of International relations by Kenneth Waltz in 1952 through his book called Man, the State and War. Waltz characterized the study of international politics in to three levels which he called images. These images ere individuals, state and world system. Through the three images levels Waltz explained why state are inter in to the conflict with another. His explanation was based on the classical realist view on the study of international relations and by use these

three images one can understand easily the causes of conflicts between states (Waltz, 2010). His theory was developed and modernized in his later book of Theories of International Relations. Since this study is based on the causes of border disputes in African countries especial Tanzania-Malawi border disputes there is no doubt that the theory will be a guideline for this study.

First Image: According to Waltz the first image of analysis is mainly focused on the individual in the conflicts. These individuals most of the time are the leaders of the countries and through them the nations can start or stop the war. This view owes its origin in the view of another philosopher named Morgenthau. According to (Morgenthau & Thompson, 1992) the main causes of the conflict between states is the human nature. He further refers to the situation in the state of nature whereby human was living in miserable life without rules and order. In the state of nature killing one another was the order of the day and life was survival for the fittest. Through this understand we can also apply this understand in Tanzania-Malawi border conflict whereby the leaders of the two countries have the different political views and philosophy.

Second image: Second images focused on the domestic characteristics of the state. While the first images focus on the human nature as the causes of conflict among state the second images dealt with the domestic structure within the country. According to Waltz the domestic politics in the state can be the main causes of the war whereby the core values of

a certain state is different from another (W. T. KENNETH, 1967). A good example to illustrate this view is by using the democratic peace theory whereby some philosophers believed that two democratic countries cannot go in to war. In our case study we can use this level to study what was the core political ideology in Both Tanzania and Malawi when the conflict started in the year 1967.

Third Image: The system or world level of analysis of international relations. Waltz concluded that in this stage or level one can understand the causes of war through the study of the world system. Different from the first and the second images the third image posed an idea that the world is running through the system and this system are the main causes of war and conflicts between states. This idea is strong supports by structural realist scholars such as John Mearsheimer. This level was more popular in explain the relations between states in the cold war period whereby the bipolar system was dominant (Waltz, 2010). Furthermore, the main argument by scholars in this level is the existing structures such as unipolarity, bipolarity and multipolarity.

9. OUTLINE OF THE STUDY

The main objective of this study is to analyze and explore the impact of colonial legacy on border conflicts in Africa by using the case study of Tanzania-Malawi border conflict over lake Nyasa. This study will use both the historical analysis and three images levels of analysis to analyze how the dispute evolved from the colonial period to post-colonial time

and show why it is difficult to resolve this conflict. This study has been organized in to four chapters as follows:

Chapter one provides a background of the African Border Conflicts disputes through the historical analysis from colonialism up to post-colonial period. Also, the chapter provide literature review on the border dispute in African States which will focus on their causes and various initiatives on the border conflicts resolutions.

Chapter two will analyze the Tanzania-Malawi border conflict over lake Nyasa as a case study. The focus will be on the revealing existing literature on the historical causes, management and mediation processes regarding this dispute. This chapter will explain the relationship between colonial legacy and the Tanzania-Malawi border dispute. Also, the chapter will reveal the historical analysis of the border dispute between Tanzania and Malawi which will cover the historical background and important events which shape this conflict. The time covered will be 1890 up to current. Through this chapter one will understand how various treaties and other documents contributed to the rise of this border dispute between Tanzania and Malawi.

Chapter Three use three image level theoretical framework to identify actors in this conflict. Three level theory will explain who the actors in this conflict are and what are their interests. These levels will start from the individual level to the Global level. This chapter will show how these actors can contribute to the process ending this dispute in a

peaceful means. Furthermore, this chapter will discuss the challenges for solving Tanzania-Malawi border dispute over lake Nyasa. This chapter will use the finding from the historical and three image level analysis and rise some argument why there is no hope for ending this dispute soon.

Chapter Four conclude and examine the result of the study and provide policy recommendation for the leaders and stake holders of the two countries. This chapter will show what can be done to solve or manage this conflict between the two countries.

CHAPTER 2: UNDERSTANDING AFRICAN BORDER DISPUTES THROUGH TANZANIA- MALAWI BORDER DISPUTE CASE STUDY

1. COLONIAL LEGACY AND TANZANIA-MALAWI BORDER DISPUTE

It must be understood that the main characteristic feature of African states borders is that they are colonial inherited. The inter political and administrative and border demarcation in Africa was designed around 19th and early 20th century through formal and informal agreement among colonial powers. Colonialist demarcated many parts of the continent especially strategic areas which seemed to be source of conflicts, but there some areas remains without clear boundaries. Where delineation took place with the supervision of colonial law, border monuments (also identified as pillars, beacons, and markers) may have missing several decades or even more than a century ago, leaving no trace at all and vagueness as to their original location (Okumu, 2014).

Many scholars support the idea that border conflicts in Africa caused by colonialism. Both (Anyu, 2007; MASSAWE & WARIOBA, 2014; Mayall, 1973) agreed that the causes of border conflicts in Africana continent as well as Tanzania-Malawi border conflict was the

results of the colonialism and its consequences. But they focus on three main areas which are the ambiguity of colonial border treaties such as Heligoland Treaty which demarcated the sphere of influence between Germany and British and lack of enough knowledge by the colonialist on the nature of African ethnic groups which led to the separation of one community in to two or three different countries.

(Maseko, 2014) informed that the Anglo-Germany Treaty (Heligoland Treaty) 1890 is the core causes of the Tanzania-Malawi border conflict. On his research on the effects of Tanzania-Malawi border conflict to Malawi local community he explained how artificial and ambiguous borders which were drawing by the colonialist resulted as the source of chaos in African countries. Further, (Mayall, 1973) when assessing the cause of Tanzania-Malawi border dispute he explained on how the scramble for and partition of Africa in 1884 in Berlin Conference didn't put in to consideration the composition structure of African local societies and geographical areas. Adding that both Tanzania and Malawi recognize and agree to be binding by the Heligoland Treaty which demarcate the sphere of influence between Germany and Britain.

According to the article 2 of paragraph 1 of the Heligoland Treaty the boundary between Nyasaland and Tanganyika ran along the eastern, western and northern shores of the Lake until it reaches the northern bank of the mouth of the Songwe River. It then continues up that river to its intersection point with the 33rd degree of east longitude. Hence the whole

Lake belonged to Nyasaland (Current Malawi) as a part of its territory (*Sanderson, 1963*). According to article II of this Agreement the entire lake is belong to Malawi and the border between Tanzania and Malawi lies on the shore of the lake on Tanzania side.

(**MASSAWE & WARIOBA, 2014**) examined the legal perspective of Tanzania-Malawi border conflict argues that, even though both sides recognize the Heligoland Treaty as the legal demarcation for the boundary still they have different views on the Treaty. While Malawi based on the Article II which show the area of influence for the two countries, Tanzania basing on the Article iv of the same Treaty which gives rooms for reformulate the border according to the need of the local community. Therefore, the treaty is ambiguous. Therefor by referring the colonial legacy and its impact in African countries its clearly that the gist of the problem was the results of unclear Treaties which were organized by the colonial powers so that they can avoid chaos and conflicts among themselves.

However, the supporters of this arguments didn't explain the conditions and nature of the African Societies before partition of the continent. According to some historian the border conflicts in Africa existed before the colonization. African Kingdoms such as Zulu Kingdom were conquered other small kingdom to expand their territories. Also, they totally condemn Berlin Conference for border conflicts in Africa while forgetting that the conference was to formalize what was already done between the European powers and the

local rulers within African societies. The Berlin Conference formalize the existed boundaries.

On the First Summit of the International Conference on the Great Lakes Region, the Tanzanian President, Benjamin W. Mkapa, argued that, African countries should stop condemning colonialism as the source of conflicts between African countries. He further mentioned that most of the African countries have more than 40 years of Independency and to continue relying on colonialism is a wrong way of addressing African border conflicts (**Sone, 2017**). This statement shows that while some of the border conflict are the results of colonial legacy, but their solutions have nothing to do with colonialism.

According to (**Mahony et al., 2014**) British annual report in the United Nations in 1925 shows that the boundary between the two countries lies in the middle of lake Nyasa. This report was supported by the new map which demarcated the new boundaries to be the median of the lake as the current position of Tanzania side. However other reports on Tanzania (Tanganyika) of 1933 and 1934 still showed the boundary between the two countries was the was in the middle of the lake except for the 1935 to 1938 which shows the border it is in the shore of the lake in Tanzania side as indicated in the Heligoland Treaty of 1889. This is to say when Britain started to rule both Tanzania and Malawi produced two kinds of maps which shows the different positions for the boundary.

2. HISTORICAL BACKGROUND

Tanzania-Malawi Border dispute is the long and deadlock border dispute between the two neighboring countries of Tanzania and Malawi. The dispute started in the year 1967 and is among the long standing African border dispute. The dispute is grounded on the location of the border between the two countries in the lake Nyasa which bordered the two countries and is the third large lake in African continent.

The history of the border dispute between Tanzania and Malawi has two main parts. The first and important one is the history of Germany and British Colonialism in the two countries. In this period the border demarcation and the dispute were between the Britain and Germany respectively who were the colonial masters for both Tanzania and Malawi. This era is where the problem started through the ambiguous Heligoland Treaty between the two super powers. The second phase is the post independency period whereby the analysis will base on the roles of the leaders of the new independent countries of Tanzania and Malawi. In this phase we can have two phases within, the first one is the period before 2011 when the dispute was only on the territorial border location and after the year 2011 after the discovering of oil and gas in the shore of the lake which increased the tensions to the dispute which triggered the negotiation process (Mayall, 1973).

Britain and Germany were the first countries to demarcate the border between Tanzania and Malawi in the period of colonization through the Heligoland Treaty of 1890 (Mayall,

1973). The Treaty demarcated several boundaries, including that between Tanganyika and Nyasaland (the predecessors of Tanzania and Malawi). At that time Tanganyika was a German colony and Nyasaland, a protectorate of Britain. Article two of the first paragraph of the Treaty provided that the boundary between Malawi and Tanganyika ran along the Songwe River (Yoon, 2014). It then continued up that river to its intersection point with the 33 degrees of the eastern longitude. Hence the whole of the Lake was part of Nyasaland (Sanderson, 1963). Following the First World War (WWI), Great Britain was given a mandate over Tanganyika and did make any changes to the border.

Scramble for and Partition of Africa

In the 18th Century the European countries were competing to each other to search for sphere of influence in African countries, this process was called scramble for and partition of Africa. In East and Central Africa, Britain, Portugal and Germany actively competed against each other for territories (A. N. Kenneth, 2016). To avoid wars and hostilities among the European powers, the scramble for and partition for Africa was finalized through Berlin Conference of 1884. But the conference itself was not self-sufficient to demarcate the borders between African countries. There were other Treaties and Agreements which demarcated the borders between the two colonialist countries and among those treaties was Anglo Germany Treaty or Heligoland Treaty as known by others of 1890 between the British and the Germany.

Heligoland Treaty and the Border Dispute Between Tanzania and Malawi

The border between Tanzania (Tanganyika before 1964) and Malawi (Nyasaland before 1967) on lake Nyasa/Malawi was demarcated in 1890 through the Anglo- Germany Treaty which known as Heligoland Treaty. The signing of the Heligoland Treaty between Germany and British in the year 1890 has been considered by many scholars as the legal binding origin of the lake Nyasa boundary between the sphere of influence between the two colonial powers (A. N. Kenneth, 2016). According to this treaty Germans sphere of influence ends on the shore of the lake. Germany agreed to end its territory on the shore of the Lake Nyasa in the exchange with the Helgoland Island in the North Sea in Europe with British. *According to the article 2 of paragraph 1 of the Treaty provided that the boundary between Nyasaland and Tanganyika ran along the eastern, western and northern shores of the Lake until it reaches the northern bank of the mouth of the Songwe River. It then continues up that river to its intersection point with the 33rd degree of east longitude. Hence the whole Lake belonged to Nyasaland (Current Malawi) as a part of its territory (Sanderson, 1963).*

British and German Colonization Era: 1890-1967

Tanzania was colonized by both Germany and Britain, Malawi was the Britain territory for the entire colonial period. Germany ruled Tanzania (Tanganyika by then) from 1885 after Berlin Conference up to 1918 soon after the end of First World War. The end of First World War comes up with many changes in international politics and punishment to Germany. According to the Article 119 of the Treaty of Versailles Germany was to surrender all her colonies to the victories of the war. Germany East Africa territory which was comprised with East African countries of Tanganyika Burundi and Rwanda was divide and shared by both Belgium and Britain (Andelman & Evans, 2008). It is in this period where British started to rule both Tanzania and Malawi while Malawi was her territory on the other side Tanzania was a protectorate territory under supervision of the League of Nations Mandate System and later United Nations. In this period Britain didn't change the border demarcation was not of concern for Britain due to the reasons that the border between Tanzania and Malawi was the domestic matter in British administration (Maseko, 2014).

Post-Colonial Era and the Management of the Border Between Tanzania and Malawi

Tanzania (Tanganyika) got her independence in 1961 and three years later after Zanzibar revolution the two countries United to form the United Republic of Tanzania in 1964. Malawi (Nyasaland) becoming an independent country in 1964. It must be noted that the border conflict between these two countries started before the Malawi independence.

Tanganyika rise the issue at first in 1956 in the colonial Legislative Council and the second time was in in 1964. The first President of Tanganyika was the first to inform the United nations that Tanganyika will not adhere to any Colonial Treaty subjected to her especial if the Treaty was not in favor of Tanganyika but on the Tanganyika Malawi border the President acknowledge the border but he initiated a concern for requesting the Malawi side to shift the border to the median line on the favor of Tanganyika.

Due to the internal politics within Tanganyika in 1967 Tanganyika official announced her concern to shift the Border from the shore line to the median line. This was the results of pressure from the Representative for the Songea constituency Chief Mhaiki. The main concern was the Government to demarcate again the border between the two countries due to the reasons that the local population were affected by the floods and other calamities from the lake while the ownership of the whole lake is in the Malawi side. This was seemed as unfair from the Tanzanian side (MASSAWE & WARIOBA, 2014).

In 1967 Tanzania officially notified the Malawi side on her intension to shift the border between the two countries from the shore line to the middle of the lake. The information was sent through Note Verbale dated January 1967. Note Verbale expressed Tanzania's intention of moving the border line from the shore of the lake to the median of the lake as stipulated in riparian rights by international customary law (Maluwa, 2015). According to (A. N. Kenneth, 2016) in this time Tanzania rejected both the shore line border and the

name of **“Lake Malawi”** It must be noted that Malawi government changed the name of the lake from lake Nyasa to lake Malawi in the year 1964 this was another way to demonstrate the sole ownership of the whole lake.

Malawi side at first acknowledge the receipt of the Verbal Note and promise to reply due time. In June 1967 President Banda of Malawi make a public statement and declared no part of the lake belong to Tanzania, the entire lake is belonging to Malawi and will continue to be like that. As the result Tanzania diploid, the patrol boat to the lake. He further notified that Malawi not accept the Tanzania claim over the border position (A. N. Kenneth, 2016). Malawian President strongly denied Tanzania’s position and insisted the country has sole ownership of the lake according to the Helgoland Treaty of 1890 about the ownership of the lake hence the dispute is not negotiable (Maluwa, 2015).

After the two countries failed to reach consensus the first attempt was to test their military capability. This was after the President of Malawi declared he cannot consider any negotiation on the border because its known the whole lake belongs to Malawi. Both Tanzania and Malawi deploy patrol boats and military to the Lake, this situation creates tension to both sides and it was almost a half war between these two countries. Later both countries surrender and withdraw their troops near by the Lake. Since the time relation between these countries in the Governmental level is antagonistic one. This issue was not discussed in detail by the two countries at this period due to the poor political relations

between the Presidents of the two countries. Where the two presidents were accusing each other. President Nyerere was accusing President Banda for supporting white domination in Mozambique and Apartheid regime in South Africa while President Banda accusing Nyerere for being a communist and dictator who pretend to fight against colonialism. These countries survived in this controversial situation whereby each country stand on her position on the location of the border and the conflict was dormant for a while (Mayall, 1973).

Dormant Phase of the Conflict (1969-2005)

Since 1963 the two countries undergo various political and administrative changes after their independency. These changes include the Unification of Tanganyika and Zanzibar to form Tanzania in Tanganyika's side while Malawi changed her former name from Nyasaland to Malawi as well as renaming the lake from lake Nyasa to lake Malawi. In this period Tanzania official started to put the border issue in to concern. The main concern in this period was to acknowledge the median border by the Malawi side (Oduntan, 2015).

Therefore, we can term the period between 1967 to 2005 as a dormant phase since Tanzania rise the issue and Malawi disagree there were no any strong attempt to this dispute. But in the year 2005 President Bingu Mutharika who wrote to his counterpart President Benjamin William Mkapa of Tanzania requesting the formation of Joint Border Committee (JCB) to resolve the dispute. Regrettably, it was a time for election in Tanzania

and later President Mutharika died without solving the problem. The matter was leaved on their predecessors who were President Jakaya Mrisho Kikwete and President Joyce Banda of Malawi (Msafiri, 2011)

Active Phase of the Conflict (2011)

Even though it is having been existed for long time Malawi-Tanzania border dispute appeared to be active only in two phases within fifty years of its existence. At first the conflict was active in the year 1967 at the early stage of the conflict. This was the time when Tanzania wrote to the Malawi Government expressing her concern about the median border. The intention for Tanzania's side was to request for the Malawi side to put in to consideration the median line border in favor of Tanzania side which for them the shore line border was not in their favor. The president of Malawi at that time rejected the Tanzania proposal which was followed by deploying the patrol boat in the lake for defense. Nothing crucial takes place this time instead of both leaders of Tanzania and Malawi blaming each other for their actions. At this period the relations between the two presidents was not good at all. Tanzania President at the time Julius Nyerere who was strong believer of Socialism and Pan Africanism was accusing the President of Malawi Dr. Kamuzu Banda for supporting white domination in some countries such as South Africa and Mozambique. On the other side Dr. Banda condemn Nyerere for supporting his political opponents by giving them asylum in Tanzania. There was no conducive environment for

resolving the conflict currently. Although it was the right and good moment for resolving this conflict the antagonistic relations between the two presidents led the border dispute unresolved. The second active phase of this conflict was in the year 2011 after the oil and gas exploration in the shore of the lake by the Malawi side which will be the focus of this thesis.

According to (Mahony et al., 2014), the tension between the two countries escalated in the year 2011 when Malawian Government gives the British Company the right to explore oil and gas on the shore of the lake. Tanzanian side informed the Malawian side to call off the exploration of natural resources on the shore of the lake until the dispute has been resolved. This was followed by the military arrangement by both two countries while on the Government leaders insisted that negotiation is their priority to solve the conflict. As one of Tanzania's Member of Parliament said *“We expect this conflict will be solved diplomatically using a committee of foreign affairs ministers from both countries and using the mediator whenever needed. Malawi is our neighbor and therefore we would not like to go into war with it. However, if it reaches the war stage then we are ready to sacrifice our people’s blood and our military forces are committed in equipment and psychologically. Our army is among modern and stable defense forces in the world”* (A. N. Kenneth, 2016)

The current and ongoing dispute restarted in 2011 when Malawi Government gave exploratory rights to a ***British company, Sure Stream Petroleum Company***, on the East

side of the lake. This restarted the dormant dispute between Tanzania and Malawi. Tanzania side reacted quickly and warns Malawi to call of all research for oil and gas exploration activities in the lake until the border conflict has been negotiated (Maluwa, 2015). From this point, the conflict changed to not only border conflict, but also a resource-based conflict. This followed by series of negotiations which didn't really succeed to solve the problem due to unwillingness of the two sides to reach mutual consensus. Up to the moment the negotiation process was stopped because of unwillingness of the two sides to change their pre-determined positions. Current the countries are in the dilemma about the future of their security because the dispute has been securitized and now is no longer a border dispute rather both border conflict and security issue.

Mediation Process

The first attempt to resolve the border dispute by the two countries were military threats. Between the year 1967 up to 1969 the two countries diploid military boats and some few soldiers near to the lake for defending the lake. This situation disappeared in the year 1969 and was followed by the dormant period where the two countries never rise the issue to any legal authority.

In the year 2012 the dispute restarted again after Malawi awarded exploratory rights to a British firm, *Surestream Petroleum Company*, on the Eastern part of the lake. The two

countries decided to adopt the mediation as the means to solve the dispute. Tanzanian side reacted quickly and call the Malawi side to top any kind of research on the shore of the lake until the negotiation of the border will be over.

In 2012 Tanzanian president Jakaya Kikwete invite his counterparty President Joyce Banda to come to discussion on the way to solve the problem peaceful. The main agenda was to discuss the issue of awarding the exploration license for British company to research for oil and gas on the area which Tanzania believed its belong to her jurisdiction. The two presidents agreed on establishing a Joint Team of Expert who will deal with the problem. This was the starting point for negotiation of the border conflict between the two countries. Both parts agreed on the Establishment of Joint Border Commission to deal with the problem while they differ on the purposes of the Commission. While Tanzania insisted the Commission should research on how to locate the border in the median line the Malawi side insisted on the Article II of the Heligoland that the shore line is the border between the two Countries. The main achievement of the Commission is to stop Malawi to continue doing research on the lake (A. N. Kenneth, 2016).

The dialog of the Ministerial Joint Commission was stopped in the year 2012 after Malawi rejecting attending the follow-up meeting which was supposed to be conducted in Tanzania on 10th to 15th September and 26th to 29th October 2012. Among other things Malawi President Joyce Banda accused Tanzanian side for torturing Malawi fishermen.

This allegation was denied by the Foreign Minister of Tanzania **Bernard Membe** who informed that Tanzania try to provide a safe and regulatory fishing environment for both sides. But unfortunately, his words didn't converse the Malawian side to continue with the negotiations (A. N. Kenneth, 2016). Also, Tanzania was accused for producing new maps with the median line as the border between the two countries. According to Malawi this was threaten the negotiations process. On the other side Foreign Minister of Tanzania informed that was the normal procedures within the country. The Minister explains that the country produces new maps for the administrative purposes and that was produces because the country created the regions. Also, he rises the concern that, the map was the 5th edition and Malawi dint rise any concern on the previous maps (Msafiri, 2011). Finally, he reiterates that Malawi side should come back to the negotiation table.

In November 2012 the two countries decided to submit the dispute to the third part mediator. They decided to handle the issue to the Africa Forum for mediation (Msafiri, 2011). On 21st December 2012 Joachim Chisano the former Mozambique President agreed to be the mediator for the conflict with the assistance from the former South African President Thabo Mbeki and Festus Mogae Former Botswana president. Official the negotiations started in the year 2013.

In the year 2013 the dispute was submitted to the Africa Forum for the mediation process. Africa Forum is the African Union organ established in the year 2006 with the former

African head of states and other leaders. The main purpose of the forum is to resolve security, social and economic disputes in African through African perspectives (Okumu, 2014).

Table 02: Periodical table to show events regarding the dispute

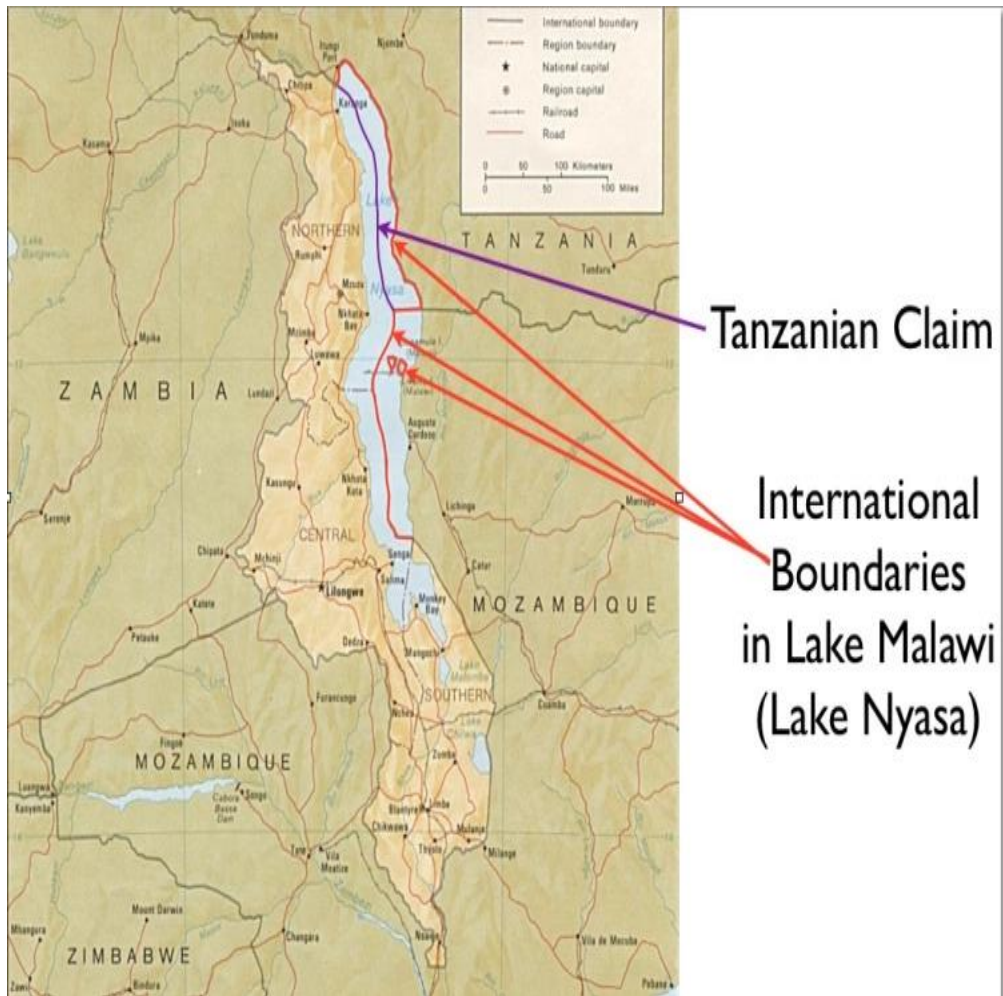
PERIOD	EVENT
1859	David Livingstone discovers Lake Nyasa
1884-85	Berlin Conference (Division of African Continent)
1890	Heligoland Agreement between Germany and Britain
1961	Tanganyika Independence (Tanzania now days)
1964	Malawi Independence (Nyasa Land before 1964)
1964	Malawi renamed the lake from Nyasa to lake Malawi
1967	Tanzanian government officially notified Malawi on the border issue
1967	Malawi government rejects the claims over the lake's boundary
2011	Malawi gives Lake Nyasa exploratory rights to Sure stream Petroleum
2011	Tanzania raises the dispute case again
2012	African Forum agrees to mediate the dispute

3. THE DISPUTE IN QUESTION

The gist of the dispute lies in the Malawi's claim of the sole ownership of the whole lake and Tanzania claims the median line ownership of the lake's part which falls under its territory. While Malawi based its claims on Anglo- Germany Treaty of 1890 which gives sole ownership of the whole lake to Malawi together with the principle of *Uti Possidetis* which insist on the respect of the inherited colonial borders in African countries, Tanzania's side referring on the traditional customary law of 1960's which gives riparian countries rights to share the resources which are located in the shared water bodies together with Article iv of the Heligoland Treaty which allow the reformulation of the Treaty according to the composition of the local community (A. N. Kenneth, 2016).

Figure 04 below shows the area of which is being discussed. The red line shows the border claimed by Malawi and the purple line show the border claimed by Tanzania which is at the middle of the lake.

Figure 02: Tanzania-Malawi Border Dispute



Source: <https://wiseonefromtheeast.files.wordpress.com/2016/09/lake-malawi-borders-map.jpg?w=748&h=524>

3.1 Tanzania's Position in the Dispute.

In the year 2013 soon before the mediation to start the Tanzania Government submitted her position paper to the former Mozambique President Joachim Chissano and the positions for the country was based on the following bases.

Both Tanzania and Malawi acknowledge the Treaty to be the crucial document in the demarcation of the border. But the Tanzanian side pose her argument on the article vi of the Treaty which allows the rectification of the border according to the local community. It was common in the colonial era when the Treaty was finished there should be a Joint Border Commission to finalize the demarcation. This was done for other Treaties such as Anglo -Belgian Joint Boundary Commission in 1923 which demarcated the borders between Rwanda, Burundi and Tanganyika Anglo-Portuguese Joint Boundary Commission in 1954 which demarcated the border between Malawi and Mozambique in the lake to me the median line instead of the shore line (Oduntan, 2015). Tanzania side further argues that soon after Heligoland Treaty Germany and British inters in to the First World War and later Germany was supposed to surrender all of her colonies to the victories of the war. In other words, is to say the treaty was incomplete.

Tanzania also based her claim on the riparian right which is the new practice for the world Nations when the two countries have water bodies as the border between them. According to this law Tanzania also agreed to share some of the big lakes in the Country such as

Victoria, Tanganyika and Jipe and why not the same to the Lake Nyasa. But also, the country added that the border is in the middle of the lake between Malawi and Mozambique and why only for Tanzania side. Though the First Malawi President has already clarified this, and he said that the Mozambican side exchange the piece of land with Malawi to shift the border to the median line between Mozambique and Malawi. In this regard Tanzania also refers to the Anglo-Germany Joint Border Commission of 1898 which was the radical change from the Heligoland Treaty article ii and this introduce Thalweg principle for river and stream boundaries. This principle said that, ***In all cases where a river or a stream forms a boundary, the Thalweg of the same shall be the boundary; If however, no actual ‘Thalweg’ is to be distinguished, it shall be the middle of the bed...*** (A. N. Kenneth, 2016)

3.2 Malawi’s Position in the Dispute

On 31st January 2013 Malawi Minister for Foreign Affairs submitted Malawi’s Formal positions in Maputo for negotiation procedures. Malawi stand on the shore line border and has backup her claim with the various historical supports such as follows:

Both two countries agree on the treaty as the binding document for the border demarcation. But while Tanzania side based on the article vi which allows the rectification of the border by the local community, Malawi side based on the article ii which indicate clearly the

shore line border as the border between the two countries. Malawi stand on Article 2 and does not consider article vi as relevant to the situation.

Nyerere who was the first Prime Minister of Tanganyika and later the first president of the country denied all Treaties which were signed by the Colonialist on the behalf of Tanganyika. He further wrote to the United Nations Secretary General regarding this issue and he notified the General Secretary that it will took only two years for Tanganyika to withdrew from all treaties which are not in the favor of the people of Tanganyika. Malawi side insisted that after two years Tanganyika side didn't rise any issue concern the boundary between the two countries and this means that the country agreed on the shore line border (Mayall, 1973).

The OAU Declaration of 1964. Cairo declaration was reached by African countries soon after their independency to prevent the possibility of war breakout in the continent due to the unclear border demarcation by the colonialist. According to this declaration heads of African states declared that they will inherit the colonial borders so that they can avoid conflicts and chaos which can be a result of the ambiguous border demarcation. Malawi support this resolution and further argued that Tanzania attempt to shift the border to the median line is the violation of this declaration.

Political Statement from Tanzanian Leaders. Malawi also go further to various political statement which given by the Tanzania's leaders regarding the shore line border.

According to the Malawi side these statements shows that Tanzania accepted the shore line border. Among these statements is the one made by the First Tanganyika President Julius Kambarage Nyerere on 12th October 1960 in the Tanganyika Legislative Council in which he said:

...but one point which I think I must emphasize again, which was raised by my Hon. Colleague the Minister for Information Services and repeated by the Attorney General is there is now no doubt at all about the boundary. We know that not a drop of the water of Lake Nyasa belongs to Tanganyika under the terms of the agreement, so that in actual fact we would be asking a neighboring Government as the Attorney General said, to change the boundary in favor of Tanganyika. Some people think this is easier in the case of water and it might be much more difficult in the case of land. (Mayall, 1973)

This statement was Nyerere replied to Chief Mhaiki a local representative for the Songea constituency who want the Tanzania Government to address the border issue due to its impact to the local population on his area.

3.3 Lake Nyasa in Details

The lake was discovered by the Dr. Livingstone in 1859 and name it lake Nyasa. The lake is known as lake Nyasa in Tanzania, lake Niassa in Mozambique and lake Malawi in Malawi. Malawi changed the name of the lake in the year 1964. The border between the

Malawi and Mozambique in the lake is in the median line while the border between Tanzania and Malawi is ambiguous since Malawi claiming the sole ownership of the lake while Tanzania regarding the median line as the border between the two countries (Maluwa, 2015).

Lake Nyasa or Malawi is the third largest lake in Africa after Victoria and Tanganyika. The lake is shared by three countries, namely Tanzania in the North, Malawi in the West and South and Mozambique in the East respectively. Furthermore the lake is endowed with more than 1500 marine species and also is among UNESCO world heritage. Also the lake is the source of life for more than 2 million people, 1.5 million are Malawian and 600,000 are Tanzanian. Before border conflict local community around the lake have been living their life depending on fishing in the lake since immemorial hence the border conflict between these two countries has created dilemma on their future life (Yoon, 2014). From the year 2011 there have been some belief that there is the possibility of having oil and gas reserves on the shore line of the lake on the Tanzania side. This was due to the reasons that the Malawi government awarded an exploration license for the British Based oil and gas company to do some research on the shore of the lake. This was the reasons for the restarting of the conflict in the year 2011.

Figure 03: Lake Nyasa Area



Source: https://gdb.voanews.com/2D5FCC2C-AF56-46C6-9115-CAB069D4CB0A_w650_r0_s.png

CHAPTER 3: THREE IMAGES LEVELS OF ANALYSIS IN TANZANIA-MALAWI BORDER CONFLICT

The first half of this section will describe the actors in the dispute with their positions and interests. Through this three-level analysis of actors in this conflict we will be able to understand the interests of each side and on what ways contributed in either escalation or de-escalation of the conflict. We will examine how and why this different interest between these actors are conflicting to each other. By level of analysis means that objects for analysis that are defined by range of spatial scales, from small to large. Levels are locations where both outcomes and sources of explanation can be located. In the study of International relations, the five most frequently used levels of analysis are International System, International Sub-system, Units, Subunits and Individual (Buzan, Wæver, Wæver, & De Wilde, 1998). The second half will explain the challenges in solving the border dispute between the two countries. The challenges will be corresponding with the levels of analysis which was used to explain the interest of each actor in the dispute.

1. FIRST IMAGE: INDIVIDUAL/HUMAN LEVEL ACTORS

These are individuals in both Tanzania and Malawi who on the one way or another contributed to the escalation or de- escalation of the conflict. Mainly they are political leaders and local societies representatives and through them the government politicized the problem and later the problem become a security issue. According to (Buzan et al., 1998) individual is the bottom line of most analysis in the social sciences.

Chief Mhaiki a representative for Songea District in the Tanganyika Legislative Council. He was the first person to initiate the issue to the Tanzanian Government. His concerns were the Tanzania Government to consider unfair shore line border which was demarcated by the Heligoland Treaty. On his view the Heligoland Treaty was not fair for the local population who are living in the shore of the lake in the Tanzania side. There were some effects on the local population which was the results of the construction of the Kariba dam. Chief Mhaiki main concern was to raise the issue to the Government to demarcate again the border between the two countries because the effects of the flood affect Tanzanians lives.

Chief Mhaiki as other leaders acknowledge the legal binding of the Heligoland Treaty of 1890. But Mhaiki's concern was more on the security of the local populations who were affected by the negative effect of the Heligoland Treaty of 1890. This was the reasons he wanted the Government of the newly independent Tanganyika to take steps to remove the

disadvantages suffered by the people of Tanganyika living along the shore of the lake (Mayall, 1973). Chief Mhaiki raised the issue twice, first before Tanganyika Independency and after independency. But top leaders of the country they didn't understand the danger of the Treaty and they reiterated their position to recognize the shore border until it was too late. In the second round Rashid Mfaume Kawawa by then the Prime Minister of Tanganyika reiterated the previous position by the Julius Nyerere that no any part of the lake belongs to Tanganyika according to the Heligoland Treaty and the British didn't change the border when ruled the country. But he added that if the country want the Malawi side to change the border it could be through the negotiation and not with British but with the new independent state of Malawi (Maluwa, 2015).

President Julius Kambarage Nyerere. He was the first Tanganyika and later Tanzania president. To large extent he politicized the problem. He was the first high level official to rise concern on the unfair border demarcation between the two countries. Nyerere first after becoming the president he wrote to the Permanent Secretary of the United Nations on his concern to reformulate all agreements which was signed by the British on behalf of the Tanganyika. This was the start point to reject the shore border between the Tanzania and Malawi. President Nyerere knowing that according to the Heligoland Treaty no drop of water of the lake belong to Tanzania but he wrote to Malawi side to persuade the Malawi to think about the possibility of shifting the border to the median line in the favor of the

Tanzanian side the thing which Malawi side rejected. President Nyerere after having been rejected by the Malawi side he decided to defend the lake through military way as Malawi diploid a patrol boat to the lake.

Nyerere Doctrine of Succession. This was the speech provided by the first president of Tanzania in 1961. According to this speech President Nyerere announced that, Tanganyika will not accept any treaty or agreement which were signed by colonialist on her behalf especially if the treaties are not in favor of Tanganyika people. Through this speech the president also wrote to the UN General Secretary to inform on this position. Tanganyika informed the United Nations that it would take two years only to be subjected by the treaties and later the country will not be subjective of any colonial treaty and if possible, the country will amend some treaties to allied with the need of the people of Tanganyika (Mayall, 1973). Again, this shows clearly there were no willingness for the president to acknowledge the shore boundary in the lake due to two main reasons. First the delimitation was putted by colonialist and the second the shore line is not in favor of Tanzanians. But Tanganyika didn't rise any concern on the Helgoland Treaty which demarcated the border between Malawi and Tanzania and this was to say they agreed with the terms and conditions putted by the Heligoland Treaty.

Nyerere Speech which support the Heligoland Treaty.

“...but one point which I think I must emphasize again, which was raised by my Hon. Colleague the Minister for Information Services and repeated by the Attorney General is there is now no doubt at all about the boundary. We know that not a drop of the water of Lake Nyasa belongs to Tanganyika under the terms of the agreement, so that in fact we would be asking a neighboring Government as the Attorney General said, to change the boundary in favor of Tanganyika. Some people think this is easier in the case of water and it might be much more difficult in the case of land (Mayall, 1973). This speech shows that President Nyerere accepted the terms and conditions in the Heligoland Treaty, but his intention was to ask a favor from the Malawi side due to the reasons that the shore line border was not favor on Tanzanian side. Also, the same position was repeated by the second Prime Minister Rashid Kawawa when Nyerere was the president in 1962.

President Jakaya Mrisho Kikwete. He was the fourth President of the United Republic of Tanzania. Jakaya Kikwete he was the president when the conflict restarted again in 2011 due to the oil and gas research which was conducted by the British Company which got the license from Malawi side in the lake. President Jakaya Kikwete announced that, Tanzania side doesn't have any plan to wage a war with Malawi on the issue but on top of that he added that the county is powerful enough to defend both its people and the territory. This is to say we are ready for negotiation but on our favor not otherwise (A. N. Kenneth, 2016).

President Hasting Kamuzu Banda. He was the first president of Malawi and the founding further of the Malawi Nation State. President Banda he played a big role in the politicization of the conflict through his speeches and position. First, the president rejected any negotiation with Tanzanian side on the border reallocation from the shore line to the median line. On top of that the president said the whole lake belongs to Malawi and there is no room for discussion for that and even some southern Tanzania provinces such as Songea and Songwe were belongs to Malawi historical and cultural (Maseko, 2014) And to allow such a thing to happen again is to deny the rights of Malawians and increase the negative effects of colonialism on Malawi.

President Bingu Mutharika. Mutharika was the third president of Malawi who shows the interest on resolving the border dispute diplomatically. Knowing the danger which can be occurred due to this deadlock dispute in the year 2005 the president wrote to the President of the United Republic of Tanzania Mr. Benjamin Mkapa informing Malawi's concern to formulate Joint Border Committee to demarcate the border. Unfortunately, it was the elections year on the Tanzania side and soon after the Tanzania election president Bingu Mutharika passed away. The matter was submitted to their successors president Jakaya Kikwete of Tanzania and President Joyce Banda of the Republic of Malawi (Maseko, 2014).

President Joyce Banda she was the fourth President of Malawi and she is the one who influenced the mediation process. President Joyce Banda accepted the negotiation process but later she calls for her country to withdraw from the negotiation due to the claim that there were no transparent in mediation process. Apart from that the president claimed that Tanzanian side use her influence on the Southern countries to influence the decisions. Due to this the negotiation process was stopped and there is the possibility for Malawi side to submit the matter to the International Court of Justice for Arbitration.

2. SECOND IMAGE: STATE LEVEL ACTORS

This level examines the roles played by the individual country in the conflict. The conflict doesn't have many state actors. According to the theory of realism state are the main actors in the international relations. State are motivated by their own national interest and there is no possibility for cooperation when it comes the matter of national interest for specific individual country (Buzan et al., 1998). In Tanzania-Malawi border conflict at least four countries are involved in this conflict with different interest in the location of the border. These countries are Britain, Germany, Tanzania and Malawi. The interest for this dispute is the land, water and natural resources (current though not proved scientifically).

Germany was the first country to colonize Tanzania soon after the Berlin Conference. Germany colonize Tanzania as the Germany East Africa territory which was comprised several countries such as the current Rwanda and Burundi. Germany was the signatory of

the Heligoland Treaty (Zanzibar Treaty) with the Britain in the year 1890. According to historians the Heligoland Treaty was signed to end the dispute between Germany and Britain. It is in this treaty whereby the Germany agreed on the shore line border in the Lake Nyasa in exchange to the strategic Island of Heligoland in the Northern Sea in Europe. Germany surrender its claim on Zanzibar Island and in some part of Uganda and Kenya which was among the British Territories in Africa for the sake of acquiring the Heligoland Island which was important for her without considering the impact of the local people who are living in the shore of lake Nyasa in the Tanzania side.

Britain was the second European country to rule Tanzania. Britain took over the ruling of Tanzania after the First World War in 1918. Germany was defeated in the First World War and according to the terms in the Versailles Treaty her colonies were supposed to be divided among the victories of the war. This make Britain to rule Tanzania as a mandatory territory until 1961 when the country got her political independency. During its administration Britain didn't put any attention on the border dispute because there was no frontier for the dispute and the matter was regarded as domestic matter within the British administration hence the country was ruling both Tanzania and Malawi at the same time. But on top of that there is the possibility Britain can influence the conflict because the company who were dealing with oil and gas exploration in the lake was from Britain.

Tanzania is among the country which have contributed much on the shaping the conflict. Tanzania was the first country to initiate the conflict by writing to the Malawi Government on the concern to shift the border of the two countries to the median line. Tanzania complain was due to the reasons that the shore line border as stipulated in the Helgoland Treaty of 1890 between the British and Germany. Tanzania interest is clear that is not accept the shore line border hence call the Malawi side to negotiate on how best to shift the border. The main argument for Tanzania lies on the interest of the Tanzanians who are living in the shore of the lake when the whole lake will belong to the Malawi Government. Also, the fluctuation nature of the lake will have some negative consequences on the Tanzania side due to the increase and decrease of the shore of the lake. In a nutshell it is difficult for Tanzania side to accept the shore line border despite the Malawi side insist to guarantee the access of the lake for the Tanzanians for some activities such as fishing and navigations.

Malawi is the strong opposer for the median line border. The Malawi stand is on the Heligoland Treaty which demarcated the sphere of influence between Tanzania and Malawi. Malawi claimed the sole ownership of the whole lake and according Article ii of the Heligoland Treaty between the Germany and Britain. Malawi side is not ready to change its position and is ready for looking arbitration from International Court of Justice if necessary. According to various scholars on African border disputes argued that there is

high possibility for Malawi to win the dispute if the matter will be submitted to the International Court of Justice (Oduntan, 2015). But up to now the no any country has submitted the dispute to ICJ. This to some extent shore that the two countries have desire to resolve the conflict by negotiation or the two countries try to avoid the hostility which can be a result of the arbitration.

3. THIRD IMAGE: GLOBAL LEVEL ACTORS

Organization for African Unity (OAU) Declaration of 1964. The organization for African Countries (OAU) or as current known as African Union (AU) is the framework and panel whereby all African countries can meet and discuss matters related with the development of the African Continent from political, economic and social. Established in the year 1963 the Organization of African Unity Charter of 1963, especially Article III (3) and (4) requires each member state to respect the territorial integrity of each state as well as the peaceful resolution of disputes (including boundary disputes). This main aim of the organization was supported by the Resolution of the Organization of African Unity (OAU) AHG/Res. 16(1), on the Border Disputes Among African States in the First Ordinary Session of the Assembly of Heads of State and Government Held in Cairo, UAR of 1964 ('the 1964 OAU Cairo Declaration') together draw a blueprint on how to deal with African border conflicts in a peaceful manner.

According to the Organization of African Union Resolution number 119 in African countries all together agreed to respect inherited colonial borders (Ababa). But the decision comes up with challenges because most of the borders were not clear demarcated. In many cases most Countries didn't respect the colonial borders especially where the two countries border the resource or economic strategic terrain such as mountain, lakes, peninsular and rivers. This create new challenges in political relations among African states, some have caused wars, affect diplomatic relations and other countries are in dilemma for their diplomatic relations. Among the affected countries is Tanzania and Malawi whereby the two countries have the long deadlocking conflict on the border demarcation on the lake Nyasa or lake Malawi as called in Malawi. It is in this basis where by the study of causes and nature of Africa border conflicts have more important in the policy recommendation and political relations in African continent.

African states knowing that they inherited the continent with many ambiguous border demarcations they agreed on to respect the inherited colonial borders in 1964 in Cairo Declaration. Modibo Keita who was the president of Mali informed that is better for African countries to accept colonial borders because any attempt to reformulate the colonial borders will be an endless border disputes in the continent. This was contrary against Kwame Nkrumah of Ghana who pioneered reformulation of colonial border disputes.

Therefore, African leaders together agreed to respect this Declaration. Malawi based her judgement in this declaration and goes further that Tanzania claiming the median border is the violation of the principle of *Uti Possidetis* which supported by all African countries. But not only Tanzania who need the reformulation of the border other countries such as Nigeria, Cameroon, Somalia, Morocco, Algeria, Ethiopia etc have the same concern. African leaders they agreed on what they didn't implement.

African Forum for Mediation. The dispute between the two countries has been submitted to the sub-regional organization for mediation. The Southern African Development Community (SADC). Established in the year 1980 with 14 members state, SADC aimed to facilitate development and peace existence within the region. Knowing the importance of peace and security within the region in 1996 the organization established the Organ on Politics, Defense and Security. This organ was vested with the power to manage, resolve and mediate any kind of conflict within the region whether intra state or interstate. And the organ was also deals with pre-empt conflicts as well as early warnings and any peaceful measures in peace keeping and prevention. It is in this umbrella whereby the dispute between Tanzania and Malawi was submitted in the organization for mediation procedures. Since the mediation started no any consensus has been reached by the two sides. The head of mediation informed the committee that the two sides are unwilling to resolve the

conflict due to their unchanging positions. This is due to the pre-determined positions from their high authorities.

The African Union Border Program (AUBP)

According to Ambassador Aguibou Diarrah, since the attainment of their independence, the inherited colonial borders has been the persistent course of tensions, conflicts and crisis among the African Nation States. But he postulates that a number of measures have been taken by African Union toward the problem which includes the 1st Ordinary Session of the Assembly of Heads of State and Government of the Organization of African Unity (OAU), held in Cairo (Egypt) in July 1964, as well as Article 4(b) of the Constitutive Act of the African Union (AU), which adopted the principle of respect of existing borders on achievement of national independence and The 8th Ordinary Session of the Assembly of Heads of State and Government of the African Union, held in Addis Ababa in January 2007, which adopted the declaration on encouraging the Commission to pursue its efforts of structural prevention of conflicts, especially through the implementation of the African Union Border Programme (AUBP) (Okumu, 2014).

Most of the African countries didn't fulfill the obligations on the Cairo declaration of 1964 which need them to respect the inherited colonial borders. This lead to the establishment of The African Union Border Program (AUBP) in the year 2002. The program aiming at delimitation all African countries borders to the year 2017. This decision by the African

Union was supported by the Tanzanian side and show the readiness to participate in the process but the country has already stated her position which is the median border and not otherwise (Oduntan, 2015).

United Nations (UN) United Nations (UN) is the world organization which was established in the year 1945 for keeping peace and security in the world. United Nations through Article VI insist on the use of diplomatic measures in case of any disputes arising between two states. But also, the organization allowed the use of military force in the Article VII if the diplomatic ways for solving the dispute cannot work properly. To have a platform through which the disputes between countries can be resolves peaceful United Nations created International Court of Justice (ICJ) which can be used in case if two countries need arbitration.

There is the long story between African countries and ICJ whereby several African border disputes have been submitted to the court for adjudication. Even though the procedures for solving disputes in this court some of the disputes have been resolved within its framework. Good examples to prove a great job done by the ICJ can ne the border conflict between Nigeria and Cameron and the dispute between Ethiopia and Eritrea. But Tanzania and Malawi they didn't submit their case in this court for arbitration. Since the mediation process was stopped in the year 2012 no further measures have been taken by both side to go further for the third part intervention to help to solve the dispute. There few reasons

which at least can explain why they don't want to submit the case to the ICJ. First in for ICJ to intervene in any dispute there must be a willingness from two sides in the disputes. The second one is to secure the good relations between the local people who are living in the both side of the lake. There will be no win-win judgement from the court one country will lose and this can create more hostility among the local people and the two government.

4. CHALLANGES IN SOLVING THE BORDER CONFLICT BETWEEN TANZANIA AND MALAWI

Through the three images level analysis and the study of actors in the dispute and their interests the study discovers some main obstacles in resolving this dispute. Other obstacles are not relating with the colonization process and they are very sensitive in such you cannot ignore them. Tanzania-Malawi border conflict as many other border conflicts is a multiple causes dispute which need systematic procedures and consideration in resolving it. This border dispute has been the deadlocked due to the various economic, political and social reasons as follows.

1. Lack of Commitment from Political Leaders.

Border disputes between Tanzania and Malawi started in the year 1967 when Tanzania (Tanganyika) wrote to the Malawi (Nyasaland) side regarding the shore line border. Tanzania expressed her consign to the Malawi side to shift the border between the two

countries from the shore line to the median of the lake putting in to consideration that, the shore line border was not in favors for Tanzania side. Malawi's Government accept the receipt of the Note Verbale and promised to reply (A. N. Kenneth, 2016) .But soon Dr. Kamuzu Banda the First President of Malawi announced that the entire lake is belonging to Malawi and the ownership of the lake is non-negotiable. No any measures have taken place from the both sides apart from using military patrol boat and later they withdraw the boat from the lake (Oduntan, 2015). The first presidents of these two countries they were in the good positions for solving the problem before the matter becoming very complicated, but they didn't see the necessity of doing that due to their political and ideological differences. What the leaders forget is skipping the problem is not solving the problem. Due to their lack of willingness the conflict was dormant from 1969 up to the year 2012 when it has restarted again after discovering oil and gas in the shore of the lake by the Malawi side.

2. Ambiguity of Heligoland Treaty

Many scholars argue that the main reasons for the African border conflict is the colonial legacy with some treaties which didn't put in to consideration the characteristic nature of African societies. Also, the Malawi-Tanzania border conflict is the result of the unfinished border Treaty known as Heligoland Treaty. According to this treaty the whole lake is belong to the Malawi or Nyasaland. But according to the article vi of the Heligoland

Treaty the two countries has given the chance to demarcate the border according to the composition of the local communities. It is in this stand whereby the two countries agree that Heligoland Treaty is the important document in the solving the border conflict between the two countries, but the main challenges are one side (Tanzania) believe that the Treaty is not conclusively while the second side Malawi side insist that the treaty is conclusively.

Both Tanzania and Malawi accept the fact that the Anglo–German agreement of July 1890 or Heligoland Zanzibar Treaty is binding on them. Malawi standing on the Article 1(2) of the script of the treaty and based on subsequent practice as a tool for interpretation. Tanzania records that Article VI allows for rectification. It stresses that the Article offers for rectification of the delimitation set out in Articles I to IV. As a result, it maintains, that the delimitation described in Article I (2) is not conclusive (Oduntan, 2015)

According to (Maluwa, 2015) the 1890 Agreement has never been revised by any subsequent international agreement, and this led to understand that Article 1(2) is the important phrase regarding lake. That said, it is also appropriate to understand that the 1890 Agreement did not create an exact boundary between Tanganyika and Malawi. Rather, as its title indicate that, it delimited "spheres of influence," leaving the actual delimitation of the boundaries subject to subsequent agreement. According to Article VI of the same Treaty stated that: "All the lines of demarcation traced in Articles II to IV shall be

subject to rectification by agreement between the two Powers, in accordance with local requirements”.(Sanderson, 1963)

Also (Maluwa, 2015) informed that together with this provision, mixed boundary commission were created to demarcate borderline on the actual ground. It was noted that, the Mixed Boundary Commission (or Anglo-German Boundary Commission), established in 1898 to demarcate the Nyasa section of the Tanganyika-Nyasaland border, apparently started its task at the entrance of the Songwe River and continued westward to Lake Tanganyika without any consideration to the shore line boundary of Lake Nyasa. It is believable that this was exactly what was projected: namely to focus only on the Lake Tanganyika-Lake Nyasa part, while treating the Lake Nyasa section as self-evident.

The challenges emerged from this area is on whether there is the legal difference between the sphere of influence and the actual boundaries. And if there is can we recognize the Heligoland Treaty of 1890 as the treaty for sphere of influence or the border demarcation Treaty. But among the few writers and commentators who have addressed this dispute specifically, none have sought to draw any legal significance from the fact that the 1890 Agreement delineated spheres of influence rather than actual boundaries.

The Heligoland Treaty between Britain and Germany which is very important document is legal judgement of the conflict is not self-sufficient by itself. The ambiguity of the Treaty itself make the conflict more antagonistic and unresolved one. According to (A. N.

Kenneth, 2016) that due to this problem you can find two different opinions from the two countries. One the Tanzania side they want to accomplish the Heligoland Treaty, the Malawi side want the Tanzanian side to accept the Heligoland Treaty article three which states that the whole lake belongs to Malawi. This is one of the reasons that made a negotiations process to be very difficult.

3. Maps and Report from Britain And German On the Border Line

According to various articles and researches on the African border disputes maps were helpful in the resolution. The use of the colonial maps helps some border conflicts to be resolved through the Arbitration process in the International Court of Justice (ICJ). A good example where the use of map contributed to the resolution of the border conflict it could be on the conflict between Nigeria and Cameroon over the Bakassi peninsula. But does that mean that we can apply the same measure for Tanzania and Malawi border conflict? No, the Tanzania-Malawi border conflict is different according to the following explanations.

Regardless of this, Tanzania standing on the point that there are many documentary indications as well as maps during the 1918 to 1949 period that show the median line as the border between both countries (Oduntan, 2015). Between the year 1890 to 1922 witnessed the making of several maps in both Britain and Germany on which the boundary

was variously shown as a median line or an eastern shoreline. On the German side, several maps reproduced in a 1909 publication on the German colonial territory surprisingly showed both the median and shoreline. Notably, an authorized map printed in 1918, at the height of the First World War, manifest the median line as the border. A subsequent publication in 1920 also showed the median line as the boundary. McEwen, who discusses these maps in some detail, dismisses the latter maps as of little probative value given that they were published at a time when Great Britain and Germany were at war with each other or immediately following the war, and thus a time of sensitive tension. Also added that it should also be understood that these maps did not explicitly purport to override the delimitation of the German sphere of influence provided for in Article 1(2) of the Treaty of 1890 (Maluwa, 2015)

A simple conclusion from the map of the East Africa as the relied document and evidence have already prove failure. Du to this misunderstand is clear that every country will stand on the map and report which indicate its position on the border line. For this case Tanzania will favor the median border line border and Malawi will favor the middle line border map. This position will hinder the negotiation to large extent.

4. The Possibility of Having Natural Resources from The Lake

Though it is not proven scientifically if the area has oil and gas reserves the research which was donned by the British Company on the shore of the lake has totally change the nature

and the interest of the two countries in the dispute on the dispute. From the year 2012 the conflict has changed to be both resources based and border dispute. This was the results of the Malawi side to award the exploration license for the British Petroleum Company to research for oil and gas in the shore of the lake on the Tanzania side. This was the main reasons for the reoccurrence of the conflict in the year 2012 (Maseko, 2014). Due to the economic status of the two countries it is very difficult to give up on this area which has already believed to have some oil and gas deposits. Even though is not yet known if the resources are really existed and if are existed is in what amount but, both countries will like to have total control of the available resources. Another challenge on this is on how to share the resources which are available if the countries will agree to do that. The question can be on who will dare the cost of the negative effect of the exploration of the natural resources example oil. The exploration will come up with some environment problems and due to the reasons, that the resources are in the shore of the lake in Tanzania side the deal will not sound good in Tanzania's side.

According to (Alao, 2007) The relationship between natural resources and conflict is long and old as human settlement. And he added that various Governments in the world throughout history are identified to have risen or collapsed because of their conquests or defeats in wars that were deeply loaded with natural resource considerations. This describes the position of natural resources to politics, diplomacy, and intergroup conflicts.

The creation of contemporary nation-states, however, introduced more complex dimensions into the nature of resource politics, with issues such as disagreements over newly drawn geographical boundaries, protests over the forceful incorporation of hitherto autonomous units into new nation-state structures, creation of new national identities, and a number of other considerations, all becoming crucial factors that consequently changed the nature of the conflicts surrounding natural resources (Maluwa, 2015). Does this historical nature explain the Tanzania and Malawi border dispute? Yes, this can be related to this border dispute as explained on the above paragraph.

Figure 04: Malawi exploration blocks



Source: http://www.africaconfidential.com/resources/1/uploads/content/12_lake_malawi_C

OL.jpg

5. Local Community Who Are Depending on The Lake for Their Living

Both countries have putted in to consideration on the impact of the dispute on the local society which is living depending on the lake. In this regards Tanzania has stressed the importance of the Lake for its shoreline residents and as a natural common triple heritage to the peoples of Tanzania, Malawi and Mozambique since ancient time. Therefore, the Lake Nyasa shoreline approximately is about 318 kilometers long covering of numerous districts specifically, Ludewa, Kyela, Nyasa and Mbinga. According to the last Tanzanian national population census of 2012 the area has population of 834,296 people living along these shoreline districts (Oduntan, 2015).

According to (Maseko, 2014) Malawi side guaranteed the access to water for the Tanzanians without any consideration of the border line, and this was the same even in the Heligoland Treaty. The remain challenge is who will make the rules and regulations for fishing and other activities in the lake. Tanzania and Malawi are two different countries with two different policies and rules on the natural resources explorations. For Tanzanian side the shore line border means to submit themselves to Malawi's rules and procedures on what to do within its own lake.

Also, the fluctuation nature of the lake will be another obstacle for Tanzania to accept the shore line border. Since the shore line of the lake is not permanent, what will happen when

the shore line is increasing to Tanzania side? Does this mean that the Malawi territory has increased natural? This is among the questions which are difficult to have the clear answer.

6. The Weakness of International Customary Law

International Customary Law is very important in the solving conflicts between the two countries. International Law includes both documented and undocumented laws which guide the conduct of relations between nations. In the Tanzania-Malawi border conflicts these can includes some treaties such as Heligoland Treaty, The Vienna Convention on the Law of Treaties, 1969, especially article 62 on Fundamental Change of Circumstances, The Treaty of the Law of the sea etc. The challenges in implementation of the International Customary Law is that the law is based on the will of the individual state to be banded by those laws. For example, according to the of the Law of the sea Treaty if two or more countries are sharing the water bodies the border should be in the median of the of the waterbodies, but this is not the case for Tanzania and Malawi whereby the Government of Malawi claim the sole ownership of the lake (Colombos & Higgins, 1967).

Furthermore, according to the AU resolution on border conflicts and management. African countries agreed to respect the inherited colonial borders and according to the Heligoland Treaty the border between the two Tanzania and Malawi it is in the shore of the lake on the Tanzania side but the Tanzanian Government denied to accept the shore border as

postulated in the Heligoland treaty which both countries agreed that is important document in solving the border dispute between the two countries.

According to the 1898 Joint Boundary Commission (JBC) which was the result of a Protocol on the Land Boundary between Tanganyika and Nyasaland in 1901, introduced the new rules on the dispute. Article 2 of this protocol introduced the Thalweg principle for river and stream boundaries. This new protocol states that:

In all cases where a river or a stream forms the boundary, the Thalweg of the same shall be the boundary; If, however, no actual 'Thalweg' is to be distinguished, it shall be the middle of the bed. (Oduntan, 2015).

CHAPTER 4: CONCLUSION AND RECOMENDATIONS

1 CONCLUSION

Africa's interstate boundaries have remained a both direct and indirect main trigger of conflict and disputes among the states. This include both inter and intra state disputes. The main reason remained on their artificial character, poor delineation and demarcation, and their porousness. Furthermore, the colonial legacy is not the main reason for African border disputes, there some other reasons which make contributed to the African border disputes, some other factors such as resources and lack of commitment from the African political leaders also can be the reasons. But this cannot be the reason to accept and legalize the African border disputes. Despite acknowledgement that the inherited African colonial borders are not feasible in their current state, the continent's political leaders and policy makers has elected and stuck to a policy of territorial status quo, partly because of a legitimate concern that any attempt to review the boundaries will lead to anarchy.

This study revealed that due to the geopolitical and economic strategic position of the lake Nyasa it has becoming very difficult for Tanzania and Malawi to resolve the border dispute on the lake Nyasa. The two countries decided to abstain from the negotiation panel with the hope for to submit the allegation to the International Court of Justice for Arbitration. Since 2012 there is no any sigh for any country to go ahead with the dispute. Does this

mean that the dispute is over? No, the history of this disputes tells us this is just a matter of waiting for the good timing or any other trigger to restart again the dispute.

Border conflicts in African and particularly Tanzania and Malawi border conflict over lake Nyasa owe their origin on the colonialism process in the African continent. But this study shows that these border conflicts have been changed or motivated to large extent with the struggle for natural resources rather than territories. This study shows that the areas which are endowed with natural resources were prone to have border conflicts. And, this proves that we cannot rely on the colonization for all African problems since it is more than a century now since most of African countries regain their political independency. Within this period African political leaders, they were responsible to end these border conflicts regardless of what was the main sources of these conflicts.

This study also shows that, African leaders themselves they have a role to play to end up all border conflicts in the continent. A good example was the African Union resolution of 1964 on how to deal with African border conflicts. This resolution pioneered the respect of the inherited colonial borders for the sake of peaceful settlement within the African continent. But the history of African border conflicts proves that the thirst for natural resources for African countries not to respect the principle of preserving the inherited colonial borders (*Utti Posidetis*) (*Ababa*). These can be exposed on border conflicts

between Nigeria and Cameroon over Bakasi peninsula. Tanzania and Malawi over lake Nyasa etc.

2 RECOMMENDATIONS

According to this study it is clearly that African border conflicts require a set of inter-related action and frameworks and these can be revolved around the following issues:

There should be an effort for African leaders to legitimize the African borders, either in their present form, which will mean remaining with the policy of boundary status quo, or in a reviewed form. And if possible there should be a crucial authoritative to determine and demarcate these boundaries effectively. It is important for the African countries and their leaders to put in to their mind that border delimitation is not viewed as separating countries or states. Rather as essential prerequisites for fruitful cooperation and integration, in the same way that undefined or poorly defined borders are a possible source of clash between neighboring countries and even states further afield. (Ikome, 2012)

Either for the Tanzania and Malawi dispute, there should be an effort for the two countries to go back to the mediation table. The only way to solve the dispute in a peaceful way should be a negotiation table. Furthermore, the two countries should abandon their current standing which was the main obstacles for the last negotiations. Also, it will be better if the two countries will discuss first on how they can establish a framework which will help the

two countries to share the natural resources which are founding in the lake which is the main catalyst for the conflict at this moment.

There is the need for African countries to transform their borders from the walls to bridges. There is the shifting now all over the world to make the world be a borderless entity which will promote more cooperation among the countries instead of separating the nations. This will be very crucial in making a strong regional cooperation such as the European Union (EU).

The Organization for African Union(AU) should enhance the effectiveness of the border demarcation and delimitation which was started in the year 2002. This is the program with the aim of eliminating all border conflict in African continent. Because the one of the obstacle for the resolution of this conflict is the Tanzania standing point that the Heligoland Treaty was didn't delimit the border between the two countries rather than the establishment of the sphere of influence. And according to some document it was the normal procedures most border Treaties were followed by the actual ground delimitation which normal put in to account the composition and the interest of the local populations. Since both countries are the member for the African Union Organization the it is the right time for the organization to use its legal and jurisdiction to intervene in this dispute.

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ABSTRACT

아프리카 국가들은 개발 과정이 효과적이고 효율적으로 진행되는 것을 방해하는 국경 분쟁이 많은 것이 특징이다. 대부분의 아프리카 국경 분쟁은 아프리카 대륙의 식민지 시대의 잔재다. 그러나 이 나라들의 독립이 50 년 이상 지났음에도 불구하고 식민주의의 영향이 개발의 주된 장애물로 남아 있다. 아프리카 국경 분쟁은 많은 생명을 앗아 갔고 여전히 개발의 주요 장애물이다.

이 논문은 식민지 유산이 국경분쟁의 유일한 원인이지만, 주로 국가 이익과 관련된 다른 요인들이 이러한 갈등의 발생에 큰 영향을 끼친다는 것을 발견했다. 이러한 다른 요인은 천연 자원, 정치 지도자의 책무 불이행, 국제 관습법의 허점과 같은 것이다. 이 냐사 호수에 대한 탄자니아-말라위 국경분쟁에 대한 사례 연구는 평화적 해결에 대한 희망이 없이 교착상태에 빠진 아프리카 국경 분쟁의 특성을 분석하고 보여주기 위함이다. 이 연구를 분석하는데 사용된 세-이미지 레벨 이론 구조는 이 국경 분쟁에 대한 각 요소간의 영향을 잘 설명해주고, 분쟁을 해결하는 협력 가능성을 감소시킨다.

키워드: 국경 분쟁, 식민지 유산, 국제 관습법, 헬리골랜드 조약, 중재, 말라위 호수

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